

House Study Bill 537

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON PETERSEN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating a smokefree air Act and providing penalties.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 5743HC 82
4 pf/rj/24

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1 1 Section 1. NEW SECTION. 142D.1 TITLE == FINDINGS ==
1 2 PURPOSE.
1 3 1. This chapter shall be known and may be cited as the
1 4 "Smokefree Air Act".
1 5 2. The general assembly finds that environmental tobacco
1 6 smoke causes and exacerbates disease in nonsmoking adults and
1 7 children. These findings are sufficient to warrant measures
1 8 that regulate smoking in public places and places of
1 9 employment in order to protect the public health and the
1 10 health of employees.
1 11 3. The purpose of this chapter is to reduce the level of
1 12 exposure by the general public and employees to environmental
1 13 tobacco smoke in order to improve the public health of Iowans.
1 14 Sec. 2. NEW SECTION. 142D.2 DEFINITIONS.
1 15 As used in this chapter, unless the context otherwise
1 16 requires:
1 17 1. "Bar" means an establishment where one may purchase
1 18 alcoholic beverages as defined in section 123.3, for
1 19 consumption on the premises and in which the serving of food
1 20 is only incidental to the consumption of those beverages.
1 21 2. "Business" means a sole proprietorship, partnership,
1 22 joint venture, corporation, association, or other business
1 23 entity, either for-profit or not-for-profit, including retail
1 24 establishments where goods or services are sold; professional
1 25 corporations and other entities where legal, medical, dental,
1 26 engineering, architectural, or other professional services are
1 27 delivered; and private clubs.
1 28 3. "Common area" means a reception area, lobby, hallway,
1 29 restroom, elevator, stairwell, the common use area of a
1 30 multiunit residential property, or other area to which the
1 31 public is invited or in which the public is permitted.
1 32 4. "Employee" means a person who is employed by an
1 33 employer in consideration for direct or indirect monetary
1 34 wages or profit, or a person who provides services to an
1 35 employer on a voluntary basis.
2 1 5. "Employer" means a person including a sole
2 2 proprietorship, partnership, joint venture, corporation,
2 3 association, or other business entity whether for-profit or
2 4 not-for-profit, including state government and its political
2 5 subdivisions, that employs the services of one or more
2 6 individuals as employees.
2 7 6. "Enclosed area" means all space between a floor and
2 8 ceiling that is contained on all sides by solid walls or
2 9 windows, exclusive of doorways, which extend from the floor to
2 10 the ceiling.
2 11 7. "Health care provider location" means an office or
2 12 institution providing care or treatment of disease, whether
2 13 physical, mental, or emotional, or other medical,
2 14 physiological, or psychological conditions, including but not
2 15 limited to a hospital as defined in section 135B.1, a health
2 16 care facility as defined in section 135C.1, an elder group
2 17 home as defined in section 231B.1, an assisted living program
2 18 as defined in section 231C.2, an adult day services program as
2 19 defined in section 231D.1, clinics, laboratories, and the

2 20 locations of professionals regulated pursuant to Title IV,
2 21 subtitle III, and includes all enclosed areas of the location
2 22 including waiting rooms, hallways, other common areas, private
2 23 rooms, semiprivate rooms, and wards within the location.
2 24 8. "Long-term care facility" means a health care facility
2 25 as defined in section 135C.1, an elder group home as defined
2 26 in section 231B.1, or an assisted living program as defined in
2 27 section 231C.2.
2 28 9. "Place of employment" means an area under the control
2 29 of an employer and includes all areas that an employee
2 30 frequents during the course of employment or volunteering,
2 31 including but not limited to work areas, private offices,
2 32 conference and meeting rooms, classrooms, auditoriums,
2 33 employee lounges and cafeterias, hallways, restrooms,
2 34 elevators, stairways, and vehicles owned, leased, or provided
2 35 by the employer unless otherwise provided under this chapter.
3 1 "Place of employment" does not include a private residence,
3 2 unless the private residence is used as a child care facility,
3 3 a child care home, or as a health care provider location.
3 4 10. "Political subdivision" means a city, county,
3 5 township, or school district.
3 6 11. "Private club" means an organization, whether or not
3 7 incorporated, that is the owner, lessee, or occupant of a
3 8 location used exclusively for club purposes at all times and
3 9 that meets all of the following criteria:
3 10 a. Is operated solely for a recreational, fraternal,
3 11 social, patriotic, political, benevolent, or athletic purpose,
3 12 but not for pecuniary gain.
3 13 b. Sells alcoholic beverages only as incidental to its
3 14 operation.
3 15 c. Is managed by a board of directors, executive
3 16 committee, or similar body chosen by the members.
3 17 d. Has established bylaws or another document to govern
3 18 its activities.
3 19 e. Has been granted an exemption from the payment of
3 20 federal income tax as a club pursuant to 26 U.S.C. } 501.
3 21 12. "Public place" means an enclosed area to which the
3 22 public is invited or in which the public is permitted,
3 23 including common areas, and including but not limited to all
3 24 of the following:
3 25 a. Financial institutions.
3 26 b. Restaurants.
3 27 c. Bars.
3 28 c. Public and private educational facilities.
3 29 d. Gaming facilities.
3 30 e. Health care provider locations.
3 31 f. Hotels and motels.
3 32 g. Laundromats.
3 33 h. Public transportation facilities and conveyances under
3 34 the authority of the state or its political subdivisions,
3 35 including buses and taxicabs, and including the ticketing,
4 1 boarding, and waiting areas of these facilities.
4 2 i. Reception areas.
4 3 j. Aquariums, galleries, libraries, and museums.
4 4 k. Retail food production and marketing establishments.
4 5 l. Retail service establishments.
4 6 m. Retail stores.
4 7 n. Shopping malls.
4 8 o. Entertainment venues including but not limited to
4 9 theaters; concert halls; auditoriums and other facilities
4 10 primarily used for exhibiting motion pictures, stage
4 11 performances, lectures, musical recitals, and other similar
4 12 performances; bingo facilities; and indoor arenas including
4 13 sports arenas.
4 14 p. Polling places.
4 15 q. Convention facilities and meeting rooms.
4 16 r. Waiting rooms.
4 17 s. Public buildings and places of public assembly owned,
4 18 leased, or operated by or under the control of the state
4 19 government or its political subdivisions.
4 20 t. Service lines.
4 21 u. Common areas.
4 22 v. Private clubs only when being used for a function to
4 23 which the general public is invited.
4 24 w. Private residences only when used as a child care
4 25 facility, a child care home, or health care provider location.
4 26 x. Child care facilities and child care homes.
4 27 13. "Restaurant" means eating establishments, including
4 28 private and public school cafeterias, which offer food to the
4 29 public, guests, or employees, including the kitchen and
4 30 catering facilities in which food is prepared on the premises

4 31 for serving elsewhere, and including a bar area within a
4 32 restaurant.

4 33 14. "Retail tobacco store" means a retail store utilized
4 34 primarily for the sale of tobacco products and accessories and
4 35 in which the sale of other products is incidental to the sale
5 1 of tobacco products.

5 2 15. "Service line" means an indoor line in which one or
5 3 more individuals are waiting for or receiving service of any
5 4 kind, whether or not the service involves the exchange of
5 5 money.

5 6 16. "Shopping mall" means an enclosed public walkway or
5 7 hall area that serves to connect retail or professional
5 8 establishments.

5 9 17. "Smoking" means inhaling, exhaling, burning, or
5 10 carrying any lighted cigar, cigarette, pipe, or other tobacco
5 11 product in any manner or in any form. "Smoking" does not
5 12 include smoking that is associated with a recognized religious
5 13 ceremony, ritual, or activity, including but not limited to
5 14 burning of incense.

5 15 18. "Sports arena" means a sports pavilion, stadium,
5 16 gymnasium, health spa, boxing arena, swimming pool, roller or
5 17 ice rink, bowling alley, or other similar place where members
5 18 of the general public assemble to engage in physical exercise,
5 19 participate in athletic competition, or witness sports or
5 20 other events.

5 21 Sec. 3. NEW SECTION. 142D.3 PROHIBITION OF SMOKING ==
5 22 PUBLIC PLACES, PLACES OF EMPLOYMENT, AND OUTDOOR ARENAS AND
5 23 THEATERS == SURROUNDING AREA.

5 24 1. Smoking is prohibited and a person shall not smoke in
5 25 any of the following:

5 26 a. Public places.

5 27 b. All enclosed areas within places of employment
5 28 including but not limited to common work areas; private
5 29 offices; auditoriums; classrooms; conference and meeting
5 30 rooms; elevators; hallways; medical facilities; cafeterias;
5 31 employee lounges; stairways and stairwells; restrooms;
5 32 vehicles owned, leased, or provided by an employer unless
5 33 otherwise provided under this chapter; and all other enclosed
5 34 areas within places of employment.

5 35 2. In addition to the prohibitions specified in subsection
6 1 1, smoking is prohibited and a person shall not smoke in any
6 2 of the following outdoor areas:

6 3 a. Outdoor sports arenas, stadiums, amphitheaters and
6 4 other entertainment venues where members of the general public
6 5 assemble to witness entertainment events, except in designated
6 6 smoking areas which may be established in perimeter areas at
6 7 least twenty feet from any seating areas or concession stands.

6 8 b. In outdoor seating or serving areas of restaurants and
6 9 within twenty feet of such seating or serving areas.

6 10 c. Within fifty feet of any entrance, operable windows, or
6 11 ventilation system of a public place or place of employment
6 12 where smoking is prohibited in order to ensure that tobacco
6 13 smoke does not enter through these or other means.

6 14 d. Public transit stations, platforms, and shelters under
6 15 the authority of the state or its political subdivisions.

6 16 e. On school grounds, including parking lots, athletic
6 17 fields, playgrounds, tennis courts, and any other outdoor area
6 18 under the control of a public or private educational facility,
6 19 including inside any vehicle located on such school grounds,
6 20 and including the perimeter area of fifty feet beyond such
6 21 school grounds to which the public is invited or in which the
6 22 public is permitted.

6 23 Sec. 4. NEW SECTION. 142D.4 AREAS WHERE SMOKING NOT
6 24 REGULATED.

6 25 Notwithstanding any provision of this chapter to the
6 26 contrary, the following areas are exempt from the prohibitions
6 27 of section 142D.3:

6 28 1. Private residences, unless used as a child care
6 29 facility, child care home, or a health care provider location.

6 30 2. Hotel and motel rooms that are rented to guests and are
6 31 designated as smoking rooms; provided that not more than
6 32 twenty percent of the rooms of a hotel or motel rented to
6 33 guests are designated as smoking rooms, all smoking rooms on
6 34 the same floor are contiguous, and smoke from smoking rooms
6 35 does not infiltrate into areas in which smoking is otherwise
7 1 prohibited under this chapter. The status of smoking and
7 2 nonsmoking rooms shall not be changed, except to provide
7 3 additional nonsmoking rooms.

7 4 3. Retail tobacco stores, provided that smoke from these
7 5 locations does not infiltrate into areas in which smoking is
7 6 otherwise prohibited under this chapter.

7 7 4. Private and semiprivate rooms in long-term care
7 8 facilities, occupied by one or more individuals, all of whom
7 9 are smokers and have requested in writing to be placed in a
7 10 room where smoking is permitted, provided that smoke from
7 11 these locations does not infiltrate into areas in which
7 12 smoking is otherwise prohibited under this chapter.

7 13 5. Private clubs that have no employees, except when being
7 14 used for a function to which the general public is invited,
7 15 provided that smoke from these locations does not infiltrate
7 16 into areas in which smoking is otherwise prohibited under this
7 17 chapter. This exemption shall not apply to any entity that is
7 18 established for the purpose of avoiding compliance with this
7 19 chapter.

7 20 6. Outdoor areas that are places of employment except
7 21 those areas where smoking is prohibited pursuant to section
7 22 142D.3, subsection 2.

7 23 7. Limousines under private hire; vehicles owned, leased,
7 24 or provided by a private employer that are for the sole use of
7 25 the driver and are not used by more than one person in the
7 26 course of employment either as a driver or passenger;
7 27 privately owned vehicles not otherwise defined as a place of
7 28 employment or public place; and cabs of motor trucks or truck
7 29 tractors if no nonsmoking employees are present.

7 30 8. An enclosed area within a place of employment or public
7 31 place that provides a smoking cessation program or a medical
7 32 or scientific research or therapy program, if smoking is an
7 33 integral part of the program.

7 34 Sec. 5. NEW SECTION. 142D.5 DECLARATION OF ESTABLISHMENT
7 35 AS NONSMOKING.

8 1 1. Notwithstanding any provision of this chapter to the
8 2 contrary, an owner, operator, manager, or other person having
8 3 custody or control of an area otherwise exempt from the
8 4 prohibitions of section 142D.3 may declare the entire area as
8 5 a nonsmoking place.

8 6 2. Smoking shall be prohibited in any location of an area
8 7 declared a nonsmoking place under this section if a sign is
8 8 posted conforming to the provisions of section 142D.6.

8 9 Sec. 6. NEW SECTION. 142D.6 NOTICE OF NONSMOKING
8 10 REQUIREMENTS == POSTING OF SIGNS.

8 11 1. Notice of the provisions of this chapter shall be
8 12 provided to all applicants for a business license in this
8 13 state, to all law enforcement agencies, and to any business
8 14 required to be registered with the office of the secretary of
8 15 state.

8 16 2. All employers subject to the prohibitions of this
8 17 chapter shall communicate to all existing employees and to all
8 18 prospective employees upon application for employment the
8 19 smoking prohibitions prescribed in this chapter.

8 20 3. The owner, operator, manager, or other person having
8 21 custody or control of a public place or place of employment
8 22 where smoking is prohibited under this chapter shall clearly
8 23 and conspicuously post in and at every entrance to the public
8 24 place or place of employment "no smoking" signs or the
8 25 international "no smoking" symbol. Additionally, a "no
8 26 smoking" sign or the international "no smoking" symbol shall
8 27 be placed in every vehicle that constitutes a public place or
8 28 place of employment under this chapter, visible from the
8 29 exterior of the vehicle. All signs shall contain the
8 30 telephone number for reporting complaints and the internet
8 31 site of the department of public health. The owner, operator,
8 32 manager, or other person having custody or control of the
8 33 public place or place of employment may use the sample signs
8 34 provided on the department of public health's internet site,
8 35 or may use another sign if the contents of the sign comply
9 1 with the requirements of this subsection.

9 2 4. The owner, operator, manager, or other person having
9 3 custody or control of a public place or place of employment
9 4 where smoking is prohibited under this chapter shall remove
9 5 all ashtrays from these locations.

9 6 Sec. 7. NEW SECTION. 142D.7 NONRETALIATION == NONWAIVER
9 7 OF RIGHTS.

9 8 1. A person or employer shall not discharge, refuse to
9 9 employ, or in any manner retaliate against an employee,
9 10 applicant for employment, or customer because that employee,
9 11 applicant, or customer exercises any rights afforded under
9 12 this chapter, registers a complaint, or attempts to prosecute
9 13 a violation of this chapter.

9 14 2. An employee who works in a location where an employer
9 15 allows smoking does not waive or surrender any legal rights
9 16 the employee may have against the employer or any other
9 17 person.

9 18 Sec. 8. NEW SECTION. 142D.8 ENFORCEMENT.

9 19 1. This chapter shall be enforced by the department of
9 20 public health or the department's designee. The department of
9 21 public health shall adopt rules to administer this chapter,
9 22 including rules regarding enforcement. The department of
9 23 public health shall provide information regarding the
9 24 provisions of this chapter and related compliance issues to
9 25 employers, owners, operators, managers, and other persons
9 26 having custody or control of a public place or place of
9 27 employment, and the general public via the department's
9 28 internet site. The internet site shall include sample signage
9 29 and the telephone number for reporting complaints. Judicial
9 30 magistrates shall hear and determine violations of this
9 31 chapter.

9 32 2. If a public place is subject to any state or political
9 33 subdivision inspection process or is under contract with the
9 34 state or a political subdivision, the person performing the
9 35 inspection shall assess compliance with the requirements of
10 1 this chapter and shall report any violations to the department
10 2 of public health or the department's designee.

10 3 3. An owner, operator, manager, or other person having
10 4 custody or control of a public place or place of employment
10 5 regulated under this chapter shall inform persons violating
10 6 this chapter of the provisions of this chapter.

10 7 4. An employee or private citizen may bring a legal action
10 8 to enforce this chapter. Any person may register a complaint
10 9 under this chapter by filing a complaint with the department
10 10 of public health or the department's designee.

10 11 5. In addition to the remedies provided in this section,
10 12 the department of public health or the department's designee
10 13 or any other person aggrieved by the failure of the owner,
10 14 operator, manager, or other person having custody or control
10 15 of a public place or place of employment to comply with this
10 16 chapter may seek injunctive relief to enforce this chapter.

10 17 Sec. 9. NEW SECTION. 142D.9 CIVIL PENALTIES.

10 18 1. A person who smokes in an area where smoking is
10 19 prohibited pursuant to this chapter shall pay a civil penalty
10 20 pursuant to section 805.8C, subsection 3, paragraph "a", for
10 21 each violation.

10 22 2. A person who owns, manages, operates, or otherwise has
10 23 custody or control of a public place or place of employment
10 24 and who fails to comply with this chapter shall pay a civil
10 25 penalty as follows:

10 26 a. For a first violation, a monetary penalty not to exceed
10 27 one hundred dollars.

10 28 b. For a second violation within one year, a monetary
10 29 penalty not to exceed two hundred dollars.

10 30 c. For each violation in excess of a second violation
10 31 within one year, a monetary penalty not to exceed five hundred
10 32 dollars for each additional violation.

10 33 3. An employer who discharges or in any manner
10 34 discriminates against an employee because the employee has
10 35 made a complaint or has provided information or instituted a
11 1 legal action under this chapter shall pay a civil penalty of
11 2 not less than two thousand dollars and not more than ten
11 3 thousand dollars for each violation.

11 4 4. In addition to the penalties established in this
11 5 section, violation of this chapter by a person who owns,
11 6 manages, operates, or who otherwise has custody or control of
11 7 a public place or place of employment may result in the
11 8 suspension or revocation of any permit or license issued to
11 9 the person for the premises on which the violation occurred.

11 10 5. Violation of this chapter constitutes a public nuisance
11 11 which may be abated by the department of public health or the
11 12 department's designee by restraining order, preliminary or
11 13 permanent injunction, or other means provided by law, and the
11 14 entity abating the public nuisance may take action to recover
11 15 the costs of such abatement.

11 16 6. Each day on which a violation of this chapter occurs is
11 17 considered a separate and distinct violation.

11 18 7. Civil penalties paid pursuant to this chapter shall be
11 19 deposited in the general fund of the state, unless the
11 20 department's designee is the local board of health, in which
11 21 case the civil penalties paid shall be deposited in the
11 22 general fund of the county.

11 23 Sec. 10. NEW SECTION. 142D.10 INTERPRETATION ==
11 24 APPLICATION.

11 25 1. This chapter shall not be interpreted or construed to
11 26 permit smoking where smoking is otherwise restricted or
11 27 prohibited by other applicable laws or regulations.

11 28 2. This chapter shall not be interpreted or construed to

11 29 repeal any existing law, ordinance, or regulation relating to
11 30 smoking in places of employment, in public places, or in
11 31 outdoor areas, which are equivalent to or more restrictive
11 32 than those provided in this chapter.

11 33 3. This chapter shall not be interpreted to prevent
11 34 political subdivisions from adopting ordinances or regulations
11 35 relating to smoking in places of employment, in public places,
12 1 or in outdoor areas, which are more restrictive than the
12 2 provisions of this chapter.

12 3 4. This chapter shall be liberally construed to effectuate
12 4 its purposes.

12 5 Sec. 11. Section 135.1, unnumbered paragraph 1, Code 2007,
12 6 is amended to read as follows:

12 7 For the purposes of chapter 155 and Title IV, subtitle 2,
12 8 excluding chapters ~~142B~~, 145B, and 146, unless otherwise
12 9 defined:

12 10 Sec. 12. Section 135.11, subsection 14, Code Supplement
12 11 2007, is amended to read as follows:

12 12 14. Establish, publish, and enforce rules not inconsistent
12 13 with law for the enforcement of the provisions of chapters 125
12 14 and 155, and Title IV, subtitle 2, excluding chapters ~~142B~~,
12 15 142D, 145B, and 146 and for the enforcement of the various
12 16 laws, the administration and supervision of which are imposed
12 17 upon the department.

12 18 Sec. 13. Section 237A.3A, subsection 5, Code 2007, is
12 19 amended by striking the subsection.

12 20 Sec. 14. NEW SECTION. 237A.3B SMOKING PROHIBITED.

12 21 Smoking, as defined in section 142D.2, shall not be
12 22 permitted in a child care facility or child care home.

12 23 Sec. 15. Section 331.427, subsection 1, unnumbered
12 24 paragraph 1, Code Supplement 2007, is amended to read as
12 25 follows:

12 26 Except as otherwise provided by state law, county revenues
12 27 from taxes and other sources for general county services shall
12 28 be credited to the general fund of the county, including
12 29 revenues received under sections 9I.11, 101A.3, 101A.7,
12 30 123.36, 123.143, ~~142B.6~~, 142D.9, 176A.8, 321.105, 321.152,
12 31 321G.7, 321I.8, section 331.554, subsection 6, sections
12 32 341A.20, 364.3, 368.21, 423A.7, 428A.8, 433.15, 434.19,
12 33 445.57, 453A.35, 458A.21, 483A.12, 533.329, 556B.1, 583.6,
12 34 602.8108, 904.908, and 906.17, and the following:

12 35 Sec. 16. Section 805.8C, subsection 3, paragraph a, Code
13 1 Supplement 2007, is amended to read as follows:

13 2 a. For violations of ~~section 142B.6~~ described in section
13 3 142D.9, subsection 1, the scheduled fine is ~~twenty-five~~ fifty
13 4 dollars, and is a civil penalty, and the criminal penalty
13 5 surcharge under section 911.1 shall not be added to the
13 6 penalty, and the court costs pursuant to section 805.9,
13 7 subsection 6, shall not be imposed. If the civil penalty
13 8 assessed for a violation of ~~described in section 142B.6~~
13 9 142D.9, subsection 1, is not paid in a timely manner, a
13 10 citation shall be issued for the violation in the manner
13 11 provided in section 804.1. However, a person under age
13 12 eighteen shall not be detained in a secure facility for
13 13 failure to pay the civil penalty. The complainant shall not
13 14 be charged a filing fee.

13 15 Sec. 17. Chapter 142B, Code 2007, is repealed.

13 16 EXPLANATION

13 17 This bill creates a new Code chapter 142D, the "Smokefree
13 18 Air Act". The bill provides findings relating to
13 19 environmental tobacco smoke, and the purpose of the new Code
13 20 chapter which is to reduce the level of exposure by the
13 21 general public and employees to environmental tobacco smoke in
13 22 order to improve the public health of Iowans.

13 23 The bill provides definitions, including definitions of
13 24 "public place" and "place of employment".

13 25 The bill prohibits smoking in public places, all enclosed
13 26 locations within places of employment, and specified outdoor
13 27 areas, including school grounds and a specified perimeter of
13 28 50 feet beyond such school grounds. In addition, smoking is
13 29 prohibited within 50 feet of any public place or place of
13 30 employment where smoking is prohibited in order to ensure that
13 31 tobacco smoke does not enter that area through entrances,
13 32 windows, ventilation systems, or other means.

13 33 Smoking is not regulated in private residences, unless used
13 34 as a child care facility or child care home, or a health care
13 35 provider location; hotel and motel rooms which meet certain
14 1 specifications; retail tobacco stores; private and semiprivate
14 2 rooms in long-term care facilities under certain conditions;
14 3 private clubs which meet certain requirements; outdoor areas
14 4 that are places of employment, with some exceptions;

14 5 limousines under private hire; certain vehicles used in the
14 6 course of employment under specific limitations; cabs of motor
14 7 trucks or truck tractors with certain limitations; and
14 8 workplaces and places of employment that provide smoking
14 9 cessation programs or medical or scientific research programs
14 10 if the smoking is an integral part of the program.

14 11 Additionally, an owner, operator, manager, or other person
14 12 having custody or control of an area exempt from the
14 13 prohibition against smoking may declare the entire area as a
14 14 nonsmoking place.

14 15 The bill requires notice of the provisions of the Code
14 16 chapter to be provided to all applicants for a business
14 17 license in the state, to all law enforcement agencies, and to
14 18 any business required to be registered with the office of the
14 19 secretary of state; that all employers subject to the
14 20 prohibitions of the Code chapter communicate to all existing
14 21 employees and to all prospective employees upon application
14 22 for employment the smoking prohibitions prescribed in the Code
14 23 chapter; that the owner, operator, manager, or other person in
14 24 custody or control of each public place or place of employment
14 25 where smoking is prohibited under the Code chapter clearly and
14 26 conspicuously post in and at every entrance to the location
14 27 "no smoking" signs or the international "no smoking" symbol
14 28 and including the telephone number for reporting complaints;
14 29 and that the owner, operator, manager, or other person having
14 30 custody or control of each public place or place of employment
14 31 where smoking is prohibited under the Code chapter remove all
14 32 ashtrays from these locations.

14 33 The bill prohibits a person or employer from discharging,
14 34 refusing to employ, or in any manner retaliating against an
14 35 employee, applicant for employment, or customer because that
15 1 employee, applicant, or customer exercises any rights afforded
15 2 under the Code chapter, registers a complaint, or attempts to
15 3 prosecute a violation of the Code chapter.

15 4 The Code chapter is to be enforced by the department of
15 5 public health or the department's designee. The department of
15 6 public health is required to adopt rules to administer the
15 7 Code chapter. Judicial magistrates are to hear and determine
15 8 violations of the Code chapter. If a public place is subject
15 9 to any state or political subdivision inspection process or is
15 10 under contract with the state or a political subdivision, the
15 11 person performing the inspection is required to assess
15 12 compliance with the requirements of the Code chapter and
15 13 report violations to the department of public health. The
15 14 bill requires an owner, operator, manager, or other person
15 15 having custody or control of a public place or place of
15 16 employment regulated under the Code chapter to inform persons
15 17 violating the Code chapter of its provisions. The bill
15 18 authorizes an employee or private citizen to bring a legal
15 19 action to enforce the Code chapter and any person may register
15 20 a complaint under the Code chapter by filing a complaint with
15 21 the department of public health or the department's designee.
15 22 In addition to other remedies, the department of public health
15 23 or the department's designee, or any other person aggrieved by
15 24 the failure of the owner, operator, manager, or other person
15 25 having custody or control of a public place or place of
15 26 employment to comply with the Code chapter, may seek
15 27 injunctive relief to enforce the Code chapter.

15 28 The bill provides civil penalties for violations of the
15 29 Code chapter. A person who smokes in an area where smoking is
15 30 prohibited is required to pay a civil penalty of \$50 for each
15 31 violation. A person who owns, manages, operates, or otherwise
15 32 has custody or control of a public place or place of
15 33 employment and who fails to comply with the Code chapter is
15 34 required to pay a civil penalty as follows: for a first
15 35 violation, a monetary penalty not to exceed \$100; for a second
16 1 violation within one year, a monetary penalty not to exceed
16 2 \$200; and for each violation in excess of a second violation
16 3 within one year, a monetary penalty not to exceed \$500 for
16 4 each additional violation. An employer who discharges or in
16 5 any manner discriminates against an employee because that
16 6 employee has made a complaint or has provided information or
16 7 instituted a legal action under the Code chapter is required
16 8 to pay a civil penalty of not less than \$2,000 and not more
16 9 than \$10,000 for each violation. Civil penalties are to be
16 10 deposited in the general fund of the state, or if the
16 11 department of public health's designee is a local board of
16 12 health in the county general fund. In addition to the
16 13 penalties, violation of the Code chapter by a person who owns,
16 14 manages, operates, or who otherwise has custody or control of
16 15 a public place or place of employment may result in the

16 16 suspension or revocation of any permit or license issued to
16 17 the person for the premises on which the violation occurred.
16 18 Under the bill, a violation of the Code chapter constitutes
16 19 a public nuisance which may be abated by the department of
16 20 public health or the department's designee by restraining
16 21 order, preliminary or permanent injunction, or other means
16 22 provided by law, and the entity abating the public nuisance
16 23 may take action to recover the costs of such abatement. Each
16 24 day on which a violation of the Code chapter occurs is
16 25 considered a separate and distinct violation.
16 26 The bill directs the department of public health to provide
16 27 information to educate employers, owners, operators, managers,
16 28 and others having custody or control of a public place or a
16 29 place of employment and the general public via the
16 30 department's internet site regarding the provisions of and
16 31 compliance with the Code chapter.
16 32 The bill provides that the Code chapter is not to be
16 33 interpreted or construed to permit smoking where smoking is
16 34 otherwise restricted or prohibited by other applicable laws or
16 35 regulations, is not to be interpreted to repeal existing laws,
17 1 ordinances, or regulations relating to smoking in places of
17 2 employment, public places, or outdoor areas, which are more
17 3 restrictive than the Code chapter; and the Code chapter is not
17 4 to be interpreted to prevent political subdivisions from
17 5 adopting ordinances or regulations relating to smoking in
17 6 places of employment, in public areas, or in outdoor areas
17 7 which are more restrictive than the provisions of the Code
17 8 chapter.
17 9 The bill repeals existing Code chapter 142B relating to
17 10 smoking prohibitions and makes conforming changes throughout
17 11 the Code.
17 12 LSB 5743HC 82
17 13 pf/rj/24